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FISCAL IMPACT STATEMENT

LS 7269

BILL NUMBER: HB 1273

NOTE PREPARED: Apr 7, 2011

BILL AMENDED: Apr 5, 2011

SUBJECT: Consumer Protection Matters.

FIRST AUTHOR: Rep. Koch

FIRST SPONSOR: Sen. Zakas

BILL STATUS: As Passed Senate

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) The bill does the following.

Unfair Practice: The bill provides that it is an unfair practice for an automotive manufacturer or distributor to fail to pay certain claims made by an automotive dealer. It authorizes an automotive manufacturer or distributor to: (1) audit certain claims; or (2) charge back to a dealer any amounts paid on false or materially unsubstantiated claims.

Definition of Health Care Provider: The bill defines health care provider for purposes of the statute authorizing the Attorney General to take certain actions with respect to abandoned health records and other records containing personal information.

Telephone Solicitation of Consumers: The bill specifies that the statute governing the quarterly listing of telephone numbers of Indiana consumers who request not to be solicited by telephone applies to a residential telephone subscriber who meets certain requirements.

It also requires the Attorney General's Consumer Protection Division (CPD) to notify Indiana residents of the right of certain subscribers or users to place a telephone number on the listing. It specifies what is included as a "telephone sales call".

Inactive Dentist License: It requires that the holder of an inactive dentist license meet competency standards before obtaining an active license.

Testing Entity: It also specifies that an entity approved by the State Board of Dentistry (SBOD) is to conduct

the examination of an applicant for a dentist or dental hygiene license.

The bill limits the number of times a dental license applicant may take any portion of the examination to three times. It allows a requirement of remediation before an applicant may take the examination for a third time.

Limited Residency and Faculty Permits: The bill eliminates the Dental Intern Permit and establishes a Limited Dental Residency Permit and a Limited Dental Faculty Permit. It changes the percentage from 5% to 10% on the number of instructors that can teach full time at a dental school under an instructor's license and removes the 2013 expiration of the instructor's license.

It requires that at least half of a dentist's continuing education hours during each license period be from a live presentation or live workshop.

Dentist Compliance Fund: It establishes a new fee collected upon application for the issuance or renewal of a dentist license, and provides for proceeds of the fee to be deposited in a fund for use in administering and enforcing the law concerning dentists and dental hygienists.

Physicians and Death Records: The bill authorizes a physician last in attendance of a deceased to initiate the document process for the death record.

Vital Records Provisions: The bill specifies that a professional who violates the vital statistics statute is to be disciplined under the professional's license instead of imposing a Class B misdemeanor and that the State Department of Health (ISDH) may not sanction providers for certain violations under the statute until January 1, 2012.

Medical Licensing Board Investigations: It authorizes the Medical Licensing Board of Indiana (MLB) to investigate and assess civil penalties for specified violations by licensed physicians. It also requires the Consumer Protection Division to forward complaints for specified violations to the MLB unless certain circumstances are met.

Physician Compliance Fund: The bill establishes the Physician Compliance Fund (PCF). It specifies reporting requirements of penalties and prohibits the MLB from reporting specified administrative penalties.

Certified Nurse Aides: It requires certain certified nurse aides to be certified by the ISDH and requires the ISDH to: (1) establish a program; (2) prescribe education and training programs; (3) determine specified standards; and (4) establish annual certification fees; for certified nurse aides who work in health facilities.

DOE Life License and Speech-Language Pathologists: It recognizes speech-language pathologists who: (1) before September 1, 1990, completed all the course work and obtained all the experience required to receive a life license from the Department of Education (DOE); and (2) was issued a life license by the DOE; as eligible to supervise speech-language pathology support personnel (in lieu of another requirement to have obtained a certificate of clinical competence from a nationally recognized association).

The bill removes a provision requiring that, to supervise speech-language pathology support personnel, a speech-language pathologist have at least three years of clinical experience. The bill also provides for licensure of speech-language pathologists if certain continuing education standards are met. It voids part of an administrative rule concerning qualification requirements to supervise speech-language pathology support

personnel.

Deceptive Consumer Sales and Home Loan Practices: The bill amends the statute concerning deceptive consumer sales to: (1) provide that a violation of the federal Fair Debt Collection Practices Act is a deceptive act; and (2) include cross references to certain consumer protection statutes, the violation of which constitutes a deceptive act. It limits the civil penalty that the Attorney General may recover for a violation of the Fair Debt Collection Practices Act to \$1,000 per consumer.

The bill also specifies that for purposes of the statute governing home loan practices, a "deceptive act" includes a knowing or intentional misrepresentation made regarding real estate transactions and mortgage transactions.

It defines "debt collector".

Department of Insurance (DOI): The bill provides that maintenance of an electronic system for the collection and storage of certain information about persons participating in or assisting with certain residential mortgage transactions also applies in the case of certain residential real estate transactions. It requires certain additional information about residential mortgage transactions and residential real estate transactions to be collected and stored in the system.

Effective Date: (Amended) Upon passage; July 1, 2010 (retroactive); December 31, 2010 (retroactive); July 1, 2011.

Explanation of State Expenditures: The bill potentially increases costs for the Attorney General (AG) with the following provisions.

Definition of Health Care Provider: The definition of a health care provider is expanded under the bill, extending the abandoned health care records provisions to apply to a person licensed, certified, registered, or regulated by any of the health care professional boards. [The law requires the AG to determine the records are abandoned, notify patients and others named in the files, and maintain the records for the time specified in statute or three years. Costs under this section are paid from the Health Records and Personal Identifying Information Protection Trust Fund enacted into law in 2010.]

Telephone Solicitation of Consumers: The definitions used in the Telephone Solicitation of Consumers Law are amended to indicate that phones using VOIP and mobile telecommunications services are covered and that telephone sales calls include text and graphic messages using short-message service. These changes may increase the number of enforcements made. Also, the AG must include subscribers of interconnected VOIP and mobile telecommunications services in notifications of Indiana residents. [The Telephone Solicitation Fund is composed of fees charged to telephone solicitors for a copy of the telephone privacy list and fines for violations of the Telephone Solicitation of Consumers Law, and the Fund pays for administration of the provisions of the statute and for deceptive acts concerning federal telephone equipment laws. In FY 2010, the Fund received revenue of \$607,500 and had expenses of \$523,900.]

Deceptive Consumer Sales and Home Loan Practices: The AG may have additional causes of action arising from violation of federal debt collection laws and out of the clarification that a deceptive act refers to a real estate transaction as well as a mortgage transaction. If the AG is successful in prosecuting the action, the AG may be awarded attorney fees and a civil penalty not to exceed \$1,000 per consumer.

Department of Insurance: Modifications to the system required under the bill have already been completed

and will result in no additional fiscal impact. [The RREAL IN database has been up and running a little over a year and became accessible on January 1, 2010.]

(Revised) *Certified Nurse Aide Requirements*: The Indiana State Department of Health (ISDH) reports that bill language associated with certification and training of CNAs along with the maintenance of a registry for CNAs and registered home health aides is required by federal law. The provisions have no fiscal impact since the bill codifies current practice.

Vital Records Provisions: The bill would reduce the number of individuals subject to the Class B misdemeanor penalty for recklessly violating or failing to comply with the requirements for electronically recording births or deaths by specifying that persons holding professional licenses would be subject to licensing sanctions instead. The bill specifies that ISDH may not begin sanctioning until January 1, 2012. The bill would decrease the amount of court fees and fines associated with a Class B misdemeanor, while licensure sanctions may increase in the Indiana Professional Licensing Agency. Any fiscal impact is likely to be small.

Medical Licensing Board (MLB) Investigations: The MLB would investigate complaints concerning licensed physicians who currently are investigated by the AG's Division of Consumer Protection. If many complaints are transferred from the Division of Consumer Protection, the MLB could require more meetings to conduct the additional hearings and appeals. Additional board meetings would result in more per diem paid to the members of the MLB to conduct the business brought on by investigations.

The Professional Licensing Agency (PLA) work group assigned to the MLB would see an increase in their workload to provide the administrative support to the MLB's investigations. The additional funds and resources required by the PLA could be supplied through existing staff and resources currently being used in another program or with new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend on legislative and administrative actions.

Attorney General: This provision would reduce the AG's Division of Consumer Protection administrative time devoted to MLB investigations.

Contracts for Dental Services: If an insurer or health maintenance organization (HMO) requires a dentist to accept an amount established by an insurer as payment for health care services provided to an insured, under the bill this act would be considered an unfair and deceptive act. To the extent insurance providers and HMOs are found to have engaged in additional unfair and deceptive acts, this bill will increase workload of the Department of Insurance to investigate allegations and provide adjudicative proceedings to determine if an unfair or deceptive act has been committed.

(Revised) *Inactive Dentist License*: With approximately 8,000 inactive licenses out of approximately 440,000 active licenses for all licensed professions (1.8%), this provision would likely minimally impact the time and resources of the Professional Licensing Agency. As of September 2010, the PLA reports no inactive dentist or dental hygienists licenses.

(Revised) *Testing Entity*: Given that the State Board of Dentistry already contracts out the dentist examination, state expenditures would be affected minimally by this provision.

(Revised) *Limited Residency and Faculty Permits*: The impact of this provision would depend on the number of permits the State Board of Dentistry would grant. The SBOD would likely have to adopt new rules for

these permits, while repealing rules for existing dental intern permits. The SBOD may require an additional business meeting to adopt new rules. The SBOD would set the permit fee.

(Revised) *Dentist Compliance Fund*: This provision would have an indeterminable impact on the expenditures of the PLA and the Attorney General. The bill would allow the PLA and AG to establish a cooperation for investigation and enforcement of dental statute. Presumably, investigations and enforcement actions by the AG or State Board of Dentistry would be limited to the amount of revenue available in the proposed Dentist Compliance Fund.

(Revised) *DOE Life License*: This provision would have an indeterminable impact on the administrative workload of the Professional Licensing Agency. The number of persons is unknown who could qualify for licensure with 36 hours of continuing education by the DOE or Professional Licensing Agency and worked at least 9 months out of the last 60 months. Based on the number of DOE licenses provided below in the background section, it is likely the number of persons that could receive licensure under this provision is small.

(Revised) The provision voiding certain administrative rules would have a minimal impact on the Legislative Services Agency, which publishes the Indiana Administrative Code.

Explanation of State Revenues: *Physician Compliance Fund (PCF)*: The bill would establish the PCF to fund the administration and enforcement of investigations of physicians conducted by the MLB. The PCF would consist of revenue from civil penalties collected by the MLB from physicians who have been determined by the MLB to have committed a violation. The amount of revenue the PCF could receive is indeterminable and would depend on the number of civil penalties assessed in future years by the MLB. The bill places a limit of \$1,000 per penalty assessed by the MLB for a violation. Revenue in the PCF at the end of a state fiscal year would not revert to the state General Fund.

Contracts for Dental Services: If this bill increases the number of unfair and deceptive acts discovered by the Department of Insurance, revenue to the General Fund will increase from civil penalties paid by violators. The penalty for engaging in an unfair and deceptive act is one or more of the following: (1) a civil penalty between \$25,000 and \$50,000 for each act or violation and (2) revocation of a person's license or certificate of authority if they knowingly engaged in an unfair or deceptive act. Actual increases in revenue are unknown.

(Revised) *Testing Entity*: This provision would not reduce state revenues from dental licensing. The PLA has not collected testing fees from dental licensing candidates since 2006. Testing fees are assessed separately by the vendor from the applicant.

(Revised) *Instructor's License*: By eliminating the sunset date in current law of June 30, 2013, and increasing the percentage of licenses allowed, more individuals may apply for an instructor's license, which could increase fee revenues to the state General Fund. However, any revenue increase is likely to be small. The current fee for an initial instructor's license is \$250 and the renewal fee is \$50. There were five dental instructor licenses active on September 15, 2010. Under current law, an instructor's license is valid only during the time the licensee is employed or has a valid employment contract in a full-time faculty position at the Indiana University School of Dentistry or an affiliated medical center.

(Revised) *Limited Faculty Permits*: This provision would have an indeterminable but likely negligible impact on net state revenues. The amount of revenue generated would depend on the fees set and the number of

limited faculty permits granted by the SBOD. The amount of revenue loss from the existing intern permit would be minimal.

(Revised) *Dentist Compliance Fund*: Dentists and dental hygienists would have to pay an additional \$20 upon application for or renewal of their license. This revenue would be deposited into the proposed Dental Compliance Fund. For the past five years, there have been, on average, about 8,000 dentists and hygienists licensed. Applied over a two-year period, the potential revenue a \$20 fee could generate in a given biennial licensing cycle is estimated at \$160,000 [i.e., 8,000 * \$20]. The estimate assumes the current level of growth in dental licensing continues.

The Compliance Fund could also receive revenue from fines and civil penalties assessed as permitted by the bill and current law. The maximum civil penalty would be \$1,000 per each violation of dental law.

(Revised) *DOE Life License*: Under current law, persons that violate speech-language pathology law can be charged with a Class B misdemeanor. Given the bill would allow a speech-language pathologist (SLP) with a license issued prior to 9/1/1990 to supervise support personnel without a CCC-SLP, there may be a slight reduction in the number of cases involving speech-language pathologists. Fewer fines would reduce revenue to both the Common School Fund (from fines) and the state General Fund (from court fees). However, any reduction in revenue would likely be small.

Additionally, the provision would also prevent a person with a license issued prior to 9/1/1990 and without a CCC-SLP from being assessed a civil penalty for the supervision of SLP support personnel in future years. Current law requires a speech-language pathologist to have a CCC to supervise support personnel.

(Revised) *Unfair Practice*: This bill adds that it is an unfair practice for a manufacturer or distributor to fail to pay incentive payment claims made by dealers. Under Indiana law, a dealer who is the victim of an unfair act may seek redress in civil court. By adding failure to make incentive payments to the definition of an unfair practice, this bill may increase civil and criminal court actions in the state. The Indiana Secretary of State (SOS) reports that if a dealer believes a manufacturer has engaged in an unfair practice, the dealer is able to file a complaint against the manufacturer with the Dealer Services Division of the SOS. The Division will then conduct an investigation of the identified manufacturer regarding the violation in question. If it is determined a violation did occur, the Division may file an administrative complaint against the manufacturer. As a result, the manufacturer will likely be subject to civil penalty.

If the manufacturer refuses to comply with the order of the Division, the Division may elect to submit the case to the Attorney General to pursue civil court action.

If a dealer's claim against a manufacturer is found to be legitimate, the manufacturer has committed a Class B misdemeanor. The Division would be responsible for submitting the case to the local prosecuting attorney in the county in which the violation occurred.

(Revised) *Civil Court Fee Revenue*: If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type

of case.

(Revised) Background Information- Dentist and Dental Hygienists- FY 2009 licensing fees for dentists and hygienists generated \$94,962. In FY 2008, the fees generated \$693,176, for a combined total of \$788,138 over the two-year cycle FY 2008 - FY 2009.

Class B misdemeanor/PLA Civil Penalties- The maximum fine for a Class B misdemeanor is \$1,000. The PLA may assess a maximum civil penalty of \$1,000 per violation on a person that violates a state statute regarding the regulation of a profession. Civil penalties are deposited in the state General Fund.

Speech-Language Pathologist License Count- As of September 15, 2010, there were 2,302 speech-language pathologists with an active license. The DOE reports the number of speech and language therapy licenses on 9/1/1990 was 1,687. The American Speech Language Hearing Association reports that in December 2009 there were 2,144 speech-language pathologists in Indiana with a certificate of clinical competence.

Explanation of Local Expenditures: (Revised) *Penalty Provision:* A Class B misdemeanor is punishable by up to 180 days in jail.

Explanation of Local Revenues: (Revised) *Penalty Provision:* If fewer court actions occur and guilty verdicts entered, local governments would receive less revenue from court fees. However, any reduction in revenue would likely be small.

(Revised) *Civil Court Fee Revenue:* If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

State Agencies Affected: AG; DOI; ISDH; IPL, MLB; State Board of Dentistry, Professional Licensing Agency; Secretary of State

Local Agencies Affected: Trial courts, local law enforcement agencies, city and town courts, local prosecuting attorney.

Information Sources: Randall Evans, DOI, 317-234-5881; Logan Harrison, DOI, 317-234-7734; and Indian Professional Licensing Agency; North East Regional Board of Dental Examiners Inc.; Ashley Gibson, Legislative Liaison, Department of Education, 232-6618; American Speech Language Hearing Association; Ashley Humphries, Indiana Secretary of State.

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